

1 Lawrence H. Meuers
2 (SBN: 197663)
3 Steven M. De Falco (*Pro Hac Vice*)
4 *FL Bar No. 0733571*
5 MEUERS LAW FIRM, P.L.
6 5395 Park Central Court
7 Naples, Florida 34109
8 Telephone: (239) 513-9191
9 Facsimile: (239) 513-9677
10 lmeuers@meuerslawfirm.com
11 sdefalco@meuerslawfirm.com

12 Attorneys for Plaintiff

13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**
15 **SAN DIEGO DIVISION**

16 **FORTUNE GROWERS, LLC, a**
17 **Nevada limited liability company,**

18 **Plaintiff,**

19 **vs.**

20 **SOUTHERN CITRUS, INC., a**
21 **California corporation; HANA GIBO,**
22 **an individual; SABAH**
23 **YUKHANNA, an individual; and**
24 **BROADWAY FARMERS MARKET,**
25 **INC., a California corporation,**

26 **Defendants.**

Case No.: 3:07-cv-2088

**DECLARATION OF STEVEN M.
DE FALCO IN SUPPORT OF NON-
MILITARY STATUS, AMOUNT
DUE, COSTS, AND ATTORNEYS'
FEES**

27 I, Steven M. De Falco, declare and state the following:

28 1. I am an associate attorney with Meuers Law Firm, P.L., attorneys of
record for Plaintiff, Fortune Growers, LLC.

1 2. I am over 18 years of age. I have personal knowledge of all matters
2 stated in this Declaration, and if called as a witness, I would and could
3 completely testify thereto.

4
5 3. This Declaration is made in support of Fortune Growers' Motion for
6 Default Judgment.

7 4. I have practiced law for three years. In my experience, I have
8 primarily represented producers and distributors of fresh fruits and vegetables
9 in disputes arising under the Perishable Agricultural Commodities Act of 1930,
10 as amended, 7 U.S.C. §§499a-t, *et seq.*

11
12
13 5. I am currently admitted to practice in the states of Illinois and
14 Florida. Additionally, I am currently admitted to practice in the following
15 federal jurisdictions: Northern District of Illinois, Middle District of Florida, and
16 Southern District of Florida.

17
18 6. On November 14, 2007, Fortune Growers filed its First Amended
19 Complaint against Defendants, Southern Citrus, Inc., Hana Gibo, Sabah
20 Youkhanna, and Broadway Farmers Market, Inc. [Docket No. 17].

21
22 7. On December 2, 2007, Fortune Growers' Summonses and First
23 Amended Complaint were served upon Defendant, Hana Gibo, personally and
24 as corporate representative of Southern Citrus, Inc. and Broadway Farmers
25 Market, Inc. [Docket Nos. 19, 20, and 21].
26
27
28

1 8. Southern Citrus, Inc., Hana Gibo, and Broadway Farmers Market,
2 Inc. have failed to file an Answer or other defenses to Fortune Growers' First
3 Amended Complaint within twenty (20) days as required by Rule 12(a),
4 Fed.R.Civ.P.
5

6 9. On December 5, 2007, this Court entered an Order permitting
7 Fortune Growers to serve Defendant, Sabah Youkhanna, with the Summons and
8 First Amended Complaint by publication. [Docket No. 23].
9

10 10. Pursuant to Cal. Code Civ. Proc. §415.50 and Cal. Gov. Code §6064,
11 on December 15, 20, and 27, 2007, and January 3, 2008, Fortune Growers
12 published the Summons and First Amended Complaint in the San Diego Union
13 Tribune. See Affidavit of Publication. [Docket No. 24].
14

15 11. Sabah Youkhanna has failed to file an Answer or other defenses to
16 the Plaintiff's First Amended Complaint within twenty (20) days of January 3,
17 2008, the last date of publication of the Notice, pursuant to Federal Rule of Civil
18 Procedure 12(a).
19

20 12. The Clerk of Court entered a Default against Defendants, Southern
21 Citrus, Inc., Hana Gibo, Sabah Youkhanna, and Broadway Farmers Market, Inc.,
22 on January 28, 2008. [Docket No. 26].
23

24 13. Defendants, Hana Gibo and Sabah Youkhanna, are not, to the best
25 of my knowledge, in the Armed Forces of the United States, as defined by the
26
27

1 Soldiers' and Sailors' Civil Relief Act of 1940.

2 14. I have read the First Amended Complaint filed in this action and
3 know the contents thereof, and that the same is true of my own knowledge.
4

5 15. There is now due by Defendants, Southern Citrus, Inc., Hana Gibo,
6 Sabah Youkhanna, and Broadway Farmers Market, Inc., to Fortune Growers,
7 LLC on the debt set forth in the Complaint, the sum of \$115,266.40, plus pre-
8 judgment and post-judgment interests, attorneys' fees, and costs.
9

10 16. Meuers Law Firm, P.L. has been retained by Fortune Growers as
11 counsel to initiate a lawsuit and to request that the Court issue a Temporary
12 Restraining Order against the Defendants.
13

14 17. On or about October 31, 2007, on behalf of Fortune Growers,
15 Meuers Law Firm, P.L. commenced the above-entitled action against
16 Defendants, seeking to enforce payment from the statutory trust imposed by the
17 PACA. As part of Fortune Growers action, Meuers Law Firm, P.L. filed
18 Temporary Restraining Order documents seeking injunctive relief against
19 Defendants to enjoin and restrain them from violating the provisions of PACA
20 and from dissipating assets subject to the PACA Trust.
21
22

23 18. On or about October 31, 2007, the undersigned United States
24 District Court Judge issued a Temporary Restraining Order. Additionally, this
25 Court scheduled a hearing for entry of a Preliminary Injunction and ordered
26
27
28

1 Fortune Growers to serve a copy of the Temporary Restraining Order upon
2 Defendants. Meuers Law Firm, P.L. hired One Legal to serve the pleadings.

3 19. On Wednesday, November 7, 2007 at 10:30 a.m., the hearing on
4 Plaintiff's Motion for Preliminary Injunction came before this Court. Meuers
5 Law Firm, P.L. attended the hearing telephonically.

6 20. Attached as Exhibit "1" are true and correct copies of the itemized
7 billing for services rendered by Meuers Law Firm, P.L.

8 21. Meuers Law Firm, P.L. has incurred fees in the total amount of
9 \$9,306.00 in connection with this matter.

10 22. I have examined and inspected the filing of Fortune Growers in this
11 matter, and I am familiar with attorneys' fees for services similar to those
12 performed.

13 23. Based upon my knowledge and experience of handling cases under
14 PACA, it is my opinion that the rates set forth in the billing attached hereto
15 constitute reasonable hourly rates, and that it was reasonable to expect 39.10
16 hours in the handling of this matter.

17 24. I further state that the following items of costs and disbursements
18 by and on behalf of Fortune Growers in said action are just, true and correct and
19 have been necessarily paid and incurred by Fortune Growers in the action,
20 copies of which are attached hereto as indicated:
21
22
23
24
25
26
27
28

DESCRIPTION	AMOUNT	EXHIBIT
Filing Fee	\$ 350.00	
Service of Process	\$ 796.00	2
Service by Publication	\$ 669.00	3
TOTAL	\$ 1,815.00	

25. I have calculated pre-judgment interest through February 11, 2008, which totals \$4,165.66. My calculations are attached as Exhibit "4".

26. In summary, Fortune Growers requests entry of Final Default Judgment in the amount of \$130,553.06, calculated as follows:

DESCRIPTION	AMOUNT
Principal	\$ 115,266.40
Pre-Judgment Interest	\$ 4,165.66
Attorneys' Fees	\$ 9,306.00
Costs	\$ 1,815.00
TOTAL	\$ 130,553.06

I declare, under penalty of perjury as set forth in 28 U.S.C. §1746, the foregoing statements to be true and correct.

Dated: February 11, 2008

s/Steven M. De Falco
Steven M. De Falco, Esq.